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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,310

12/31/2003

David P. Aschenbeck

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05/13/2008

OWENS CORNING
2790 COLUMBUS ROAD
GRANVILLE, OH 43023

EXAMINER

KRUER, KEVIN R

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action

Applicant's arguments filed April 22, 2008 have been fully considered but are not persuasive. Applicant's proposed amendments have not been entered because they raise new issues that would require further search and/or consideration. Specifically, claims requiring the "first portion of granules remaining substantially on the upper surface of the asphalt coated paper" have not previously been considered. Furthermore, the proposed amendments have not been entered because said limitation does not have explicit or implicit support in the originally filed disclosure. Applicant points to paragraphs (0018) and Figure 3 as support for said limitation but the examiner respectfully disagrees. Paragraph (0018) neither explicitly supports said limitation nor does the described method implicitly support it. With regards to Figure 3, it is not clear why applicant feels the proposed amendment is implicitly supported.

Applicant argues the examiner fails to consider the limitation contained in claim 38 that specifies the particles in the asphalt coated sheet are "prime" granules. The examiner respectfully disagrees. As noted in the rejection, the largest aggregates were understood to read on the claimed "first portion of granules," including the prime granules of claim 38. Applicant argues said particles are not prime granules but "rathera mixture of rock particles and...waste or by product materials, such as ceramic scarp, tile scrap, and furnace slag." Applicant, however, fails to explain why such particles do not read on the claimed "prime" granules. As noted on pages 1 and 2 of the specification, prime granules are those granules that are colored, provide aesthetic benefits or provides a functional purpose. The particles disclosed in Ingram meets all

three categories as it is colored and provides the function of weather resistance (col 1, lines 18+).

Applicant argues claims 15, 16, and 23 are distinguished from the applied art based upon the proposed amendments. Said argument is moot in view of the non-entry of the proposed amendment.

Applicant further argues the particles of Ingram do not read on the claimed "shingle granules." Specifically, applicant argues shingle granule should be limited to read on "materials treated with a ceramic coating" as is well known by those in the art. Applicant's disclosure contains no support for such a narrow definition. Furthermore, applicant provides no evidence supporting the conclusion that the proposed definition is "well known by those in the art."

With respect to the combination of Ingram and Kiik, Applicant argues the references fail to teach "a two step process" as claimed but rather teaches a roofing material occurring generally throughout the asphalt matrix. Said argument is noted but is not persuasive. The claimed process has not been shown to inherently result in a particle distribution distinct from that rendered obvious by the prior art. Furthermore, applicant has failed to show that the claimed process inherently results in any other structurally distinct product limitation.

With respect to the newly filed Grubka declaration, numerous arguments are presented:

(1) The distribution of the granules-said argument is fully addressed above.

(2) Particles of Ingram are not “shingle granules”-said argument has been fully addressed above.

(3) Purpose- As noted in the MPEP, the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem.

(4) Granules-Applicant argues the first portion of shingle granules has requirements as to size, consistency and color. Said argument is not commensurate in scope with the claims in that the claims do not recite a specific size, consistency or color.

(5) “granules remain substantially on the upper surface of the asphalt coated sheet” - Said argument is moot because the proposed amendment has not been entered.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN R. KRUEER whose telephone number is (571)272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

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/Kevin R Kruer/
Primary Examiner, Art Unit 1794